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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. [redacted] 63

MAGNOLIA PETROLEUM COMPANY,
Petitioner,

versus

SULLIVAN H. HUNT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, OF THE STATE OF LOUISIANA, AND BRIEF IN SUPPORT THEREOF.

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INDEX TO PETITION AND BRIEF.

	Page
Amplification of Facts, Brief, Article III	10
Argument, Brief, Article V	12
Assignment of Error, Brief, Article IV	11
Brief, beginning	9
Decree or Decision to Be Reviewed	6, 9
Jurisdiction, Petition, Article II	4
Jurisdiction, Brief, Article II	10
Matter Involved, Petition, Article I	2
Question Presented, Petition, Article IV	6
Reasons Relied On, Petition, Article V	6

INDEX TO AUTHORITIES.

Act of February 13, 1925 (U. S. C. A., Title 28, Section 344)	4, 10
Act May 26, 1790 (U. S. C. A., Title 28, Section 687)	17
Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532, 547, 55 S. Ct. R. 518	13, 14
American Railway Express Co. v. Levee, 263 U. S. 19, 44 S. Ct. R. 11	5
Christmas v. Russell, 5 Wall. 290, 18 L. Ed. 475	20
Constitution of Louisiana, 1921, Article VII, Sections 10, 11 and 29	4
Constitution of United States, Article IV, Section 1	4, 7
Davis v. Davis, 305 U. S. 32, 40, 59 S. Ct. 3, 6, 83 L. Ed. 26	18

INDEX TO AUTHORITIES—(Continued)

Page

Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039 18

Gilbert v. Des Lauriers Column Mold Co., 167 N. Y. S. 274 12

Hampton v. M'Conel, 3 Wheat. 234, 235, 4 L. Ed. 378 17

Hunt v. Magnolia Petroleum Company, 10 Sou. Rep. (2d Series) 109 ..... 3, 6, 9

Louisiana General Statutes, Dart, Section 1450 5

Milwaukee County v. M. E. White Co., 296 U. S. 276, 56 S. Ct. 234 15

Ocean Accident & Guarantee Corp. v. Pruitt, 58 S. W. (2d) p. 41 19

Vernon's Ann. Civil Stat. (Texas), Art. 8306, et seq. 10

Williams v. North Carolina, 63 S. Ct. R. 207, 87 L. Ed. 189 ..... 12, 14, 15, 16, 17, 18

Yarborough v. Yarborough, 290 U. S. 202, 54 S. Ct. 181 17

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No._____

MAGNOLIA PETROLEUM COMPANY,
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versus

SULLIVAN H. HUNT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, OF THE STATE OF LOUISIANA.

To the Honorable, the Supreme Court of the United States:

Petitioner, Magnolia Petroleum Company, a Texas corporation, respectfully prays that a Writ of Certiorari issue to review a decree of the Court of Appeal, First Circuit, of the State of Louisiana (hereinafter in this petition and the brief referred to as Court of Appeal), being the highest court of the State in which a decision could be had, entered in suit there entitled "Sullivan H. Hunt v. Magnolia Petroleum Company" (R. p. 81), affirming a judgment of the District (Trial) Court, Calcasieu Parish, Lou-

isiana, in favor of Sullivan H. Hunt (R. p. 80); and in support of its petition shows:

I.

The matter involved, summarily stated, is this:

Respondent, Sullivan H. Hunt, obtained a judgment against Petitioner in the District Court, Calcasieu Parish, Louisiana, which was affirmed by the Court of Appeal, First Circuit, of the State of Louisiana, under the Workmen's Compensation law of the State, based on an injury which had occurred in Texas while Respondent was in Petitioner's employ.

The record shows that Sullivan H. Hunt suffered an injury to his leg at Kermit, Texas, on May 25, 1939, where he had been performing work for Petitioner since March 14, 1939. He had theretofore worked for Petitioner in Louisiana and the basis of his suit (recognized by the Louisiana Court and not now an issue) was that his services in Texas were performed under a Louisiana contract.

Pursuant to the law of Texas Petitioner, after the accident, forwarded report thereof to Industrial Accident Board of Texas and on June 8, 1939, Respondent, Sullivan H. Hunt, submitted regular forms to that Board, over his signature, one styled "Claim for Compensation" and the other "Notice of Injury" (R. pp. 51, 53). After this report compensation was paid to Respondent at the rate of $20.00 per week under the Texas law until October 23, 1940, when a question was raised as to the amount due

him. On November 8, 1940, the Industrial Accident Board notified Respondent that a hearing would be had on November 19, 1940 (R. p. 47). The Board, on December 3, 1940, rendered judgment or order awarding compensation to Respondent at the rate of $11.90 per week and Respondent's attorneys, who had communicated with the Board, were notified to that effect (R. p. 41). The judgment was proved according to the Act of Congress (R. pp. 59, 60).

It was shown without contradiction, and the Court of Appeal admitted, that the Industrial Accident Board of Texas, under the law of that State, is a body having judicial powers whose judgments become final unless appealed from within the time (40 days) allowed (see testimony of Sam Lipscombe, R. p. 73, Letter of Meyers, R. p. 63). While, as stated, Respondent's Counsel, the same as in the Louisiana case, communicated with the Texas Board during the period allowed for appeal, no appeal was applied for. (R. pp. 41, 60). On Decebmer 18, 1940, Respondent filed suit against Petitioner in the District Court of Calcasieu Parish, Louisiana (R. pp. 1-4) seeking compensation for the same injury for which he had been paid in Texas and upon which the judgment or order had been rendered in his favor by the Industrial Accident Board of that State.

According to the evidence and the decision of the Court of Appeal, "all matters relating to the filing of these forms by both the employer and employee appear to have been in conformity with the usual procedure under the Workmen's Compensation Law of Texas" (R. p. 82).

Various defenses were urged in this case by exceptions or special pleas and on the merits; all were decided against Petitioner in the Trial Court and the Court of Appeal. The defenses there made are not now subject to review except the one which involves a Federal question giving this Court jurisdiction. That defense is the plea of *res judicata*, urged through all the courts, based on the former judgment obtained in Texas and the full faith and credit clause of Article IV, Section 1, of the Constitution of the United States.

II.

This Court has jurisdiction to review the decree or decision of the Court of Appeal because:

(a) As hereafter appears the question presented involves a right, privilege or immunity (specially set up in the Louisiana Courts) under the Constitution of the United States and particularly the full faith and credit clause thereof (Art. IV, Sec. 1); and this Court has jurisdiction to review the judgment of the Court of Appeal, First Circuit, of the State of Louisiana, under Section 1, paragraph (b) of Act of February 13, 1925, as amended (Judicial Code, Section 237, U. S. C. A., Title 28, Section 344).

(b) The present Louisiana Constitution (1921) gives exclusive appellate jurisdiction to the Court of Appeal in all cases under the Louisiana Workmen's Compensation law (Article VII, Sections 10 and 29). But Article VII, Section 11, makes it competent for the Supreme Court of Louisiana (the highest Court of the State) to require,

by Writ of Certiorari, a case to be certified by the Court of Appeal to it for review, provided application therefor shall be filed within thirty days after a rehearing shall have been refused by the Court of Appeal.

(c) The decision or decree of the Court of Appeal, First Circuit, of the State of Louisiana, was rendered on October 8, 1942 (R. p. 92); application for rehearing was filed therein October 19, 1942, within the time allowed by law (Acts 1910, No. 16, Section 1; Dart's Louisiana General Statutes, Section 1450).

(d) The application for rehearing was refused by the Court of Appeal November 18, 1942 (R. p. 96); the petition to the Supreme Court of Louisiana for Writ of Certiorari and Review was filed November 30, 1942 (R. p. 107) and refused by it January 5, 1943 (R. p. 107).

(e) Although application was made to the Supreme Court of Louisiana for Writ of Certiorari and Review to the Court of Appeal; although the application was refused with the statement that the Court saw "no error of law in the judgment complained of"; the Writ of Certiorari herein prayed for should properly be directed to the Court of Appeal, First Circuit, of the State of Louisiana, under the authority of the decision of this Court, involving the same Louisiana procedure, in *American Railway Express Company v. Levee, 263 U. S. 19, 44 S. Ct. R. 11.* And the time for applying to this Court for the writ (according to the decision just mentioned) only began when the Writ of Certiorari was refused by the Supreme Court of Louisiana.

III.

The decree or decision of the Court of Appeal, First Circuit, of the State of Louisiana, is reported in *10 Sou. Rep. (2d Series), page 109.* There is no other official report of that decision and none of the proceedings in the trial Court. Neither is the refusal of the Supreme Court of Louisiana of application for Writ of Certiorari and Review reported under the law.

IV.

The question here presented, briefly stated, is whether the judgment or order of the Industrial Accident Board of Texas, conclusively shown, and held by the Court of Appeal, to be effective as a final judgment under the laws of Texas, which awarded compensation to an employee for an injury suffered in that State while in Petitioner's employ, should be given "full faith and credit" under the Federal Constitution by the Courts of Louisiana in a suit brought under the Louisiana Workmen's Compensation law based on the same injury and therefore for the same cause of action, but on the theory that the employment in Texas was under a Louisiana contract.

V.

The reasons relied on, as more fully presented in the accompanying brief, are that:

(a) The judgment or order of the Industrial Accident Board of Texas, according to the undisputed evidence, the decision of the Court of Appeal, and laws of Texas, was a final judgment between the parties in that State. (R. pp. 76, 87).

(b) The judgment, being final as between the parties in the State of Texas, was *res judicata* there and settled the claim for the cause of action sued upon in Louisiana.

(c) Therefore, the judgment or order in Texas was entitled to and should have been given full faith and credit by the Courts of Louisiana under Article IV, Section 1, of the Constitution of the United States; and the plea of *res judicata*, based on the Federal Constitution, should have been maintained by the Court of Appeal in accordance with the applicable decisions of this Court.

WHEREFORE, Magnolia Petroleum Company, Petitioner, through its undersigned attorney, prays that a Writ of Certiorari issue directed to the Court of Appeal, First Circuit, of the State of Louisiana, to review the decree or judgment entered on October 8, 1942, in suit there entitled "Sullivan H. Hunt v. Magnolia Petroleum Company"; and that upon hearing said decree of the Court of Appeal be reversed and set aside.

Respectfully submitted,

MAGNOLIA PETROLEUM COMPANY,

By Cullen R. Liskow,
Lake Charles, Louisiana,
Its Attorney.

Supreme Court of the United States

OCTOBER TERM, 1942

No._____

MAGNOLIA PETROLEUM COMPANY,
Petitioner,

versus

SULLIVAN H. HUNT,
Respondent.

BRIEF IN SUPPORT OF FOREGOING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FIRST CIRCUIT, OF THE STATE OF LOUISIANA.

May It Please this Honorable Court:

In support of the foregoing petition for Writ of Certiorari, Petitioner, following the rules of this Court, presents the following brief and argument:

I.

The petition seeks a writ directed to the Court of Appeal, First Circuit, of the State of Louisiana, to review decree rendered by it in suit there entitled "Sullivan H. Hunt v. Magnolia Petroleum Company", reported in *10 Sou. Rep. (2d Series), page 109* (R. p. 81). The decision

of the Court of Appeal affirmed judgment of the District Court, Calcasieu Parish, Louisiana. The Supreme Court of Louisiana denied application for Writ of Certiorari to the Court of Appeal. No opinions nor decisions in the courts below were officially reported except that in the *10 Sou. Rep. (2d Series), page 109.*

II.

The grounds on which the jurisdiction of this Court is invoked have been specifically set forth in the foregoing petition. In summary they are that this Court has jurisdiction under Act of February 13, 1925, as amended (U. S. C. Title 28, Section 344) as the question presented involves a right, privilege or immunity specially set up in the Louisiana Courts under the full faith and credit clause of the Constitution of the United States, the right, privilege or immunity having been denied by the Court of Appeal, First Circuit, of the State of Louisiana.

III.

The facts are set forth in the petition. But in emphasis and amplification it is said:

It was proved by uncontradicted evidence, statutes and decisions that the judgment was obtained in accordance with the laws of the State of Texas; that no appeal was applied for; that under the law of Texas the judgment then became final and was binding on the parties; and would have been subject to a plea of *res judicata* had another suit been filed there. The Court of Appeal recognized these facts:

"*It is conclusively shown that the* Texas law, Vernon's Ann. Civ. St., Art. 8306, et seq., vests the

> Industrial Accident Board of the State of Texas with jurisdiction in cases of compensation involving injuries sustained by employees in that State and who are even only temporarily employed therein, and it is conceded that all proceedings before that Board and *the awards made by it have the same force and effect as proceedings before and judgments rendered by courts of competent jurisdiction in that State.*" (R. p. 87, Italics ours).

Although Respondent had appeared before the Industrial Accident Board voluntarily to claim compensation, it was urged by him in this case that as the contract of employment was made in Louisiana the Texas Board did not have jurisdiction to entertain the claim or render its decree. The trial court agreed with that contention; but the law is plainly to the contrary and the Court of Appeal held otherwise as appears from the foregoing quotation; that question was settled.

The Court of Appeal then left for decision only the question of the effect, in Louisiana, of the award or judgment granted in the State of Texas.

IV.

The error assigned is that the Court of Appeal, First Circuit, of the State of Louisiana, erroneously answered its own query (R. p. 87), to-wit:

> "the vital and important question therefore is what effect must the Louisiana court give to the ruling under which the award was made",

when it decreed that it was not bound to give the Texas award or judgment full faith and credit under the Federal

Constitution although conceding that it was a final adjudication under the laws of that State.

V.

A summary of the argument to be here made is best presented by a mere reference to the recent decision of this Court in *Williams v. State of North Carolina, 63 S. Ct. R. 207, 87 L. Ed. p. 189.* In justice to the Courts of Louisiana attention is called to the facts that the cited case, which denies their conclusions, was decided by this Court on December 21, 1942, after the decision by the Court of Appeal and only a few days before the Supreme Court of Louisiana refused the application for Writ of Certiorari and when there was no time nor opportunity to call the decision and its pertinence to that Court's attention. If the *Williams* decision, fully answering the question posed, had been rendered before the instant case was decided by the Court of Appeal or presented to the Supreme Court of Louisiana, the burden of this proceeding, no doubt, would have been avoided. More will be said about that case later.

The Court of Appeal, while not basing its decision on the idea, gave some credence to the assumption that Petitioner was "not in law aggrieved" because credited with the amount of the award in Texas. The quoted language was from the case of *Gilbert v. Des Lauriers Column Mold Company, 180 App. Div. 59, 167 N. Y. S. 274,* which admittedly, however, did not involve a Federal question. But that is beside the point. The question is not what judgment was rendered in Respondent's favor by the Texas Court but whether the thing had the force of *res judicata;*

the authority of the thing adjudged. Here, the parties were the same. The cause of action was the same. And there is no doubt, from anything in the record, that the judgment was final between them in the State of Texas.

Whether more could have been obtained in the beginning in the State of Louisiana is again beside the point. If one should indulge in speculation it could be assumed that, under a different setting, the Texas decree would have been for more or for less than could have been had in Louisiana. There is nothing to show that Respondent, even after voluntarily appearing before the Industrial Accident Board of Texas, could not have changed his plans, withdrawn his claim and then have sought relief elsewhere. Nor can it be imagined that one would argue that a judgment is binding on one party to it and not on the other. Petitioner, by the Industrial Accident Board's decree, was bound. It could not have proceeded in Louisiana to set the judgment aside because, say, it found it more advantageous to have Respondent's rights determined under the Louisiana law.

But this, too, is more or less beside the point. The gravamen of the decision of the Court of Appeal rests on some assumed idea (which does not clearly appear) that the judgment in Texas was contrary to the public policy of this State; and that Court then erroneously and almost entirely based its conclusion on a faulty analysis of this Court's decision in *Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532, 547, 55 S. Ct. R. 518.*

The Court of Appeal realized that this Court, in the *Alaska Packers* case, was concerned only with the application of the full faith and credit clause in its relation to the *statutes* of different States; but it concluded that it was only natural that the same limitation or exception would apply to judgments of courts and rulings of administrative boards.

The last mentioned idea of the Court of Appeal proves its own error. When the question is the *enforcement of a statute* of one State by another, an entirely different problem is presented as was so ably shown by the majority opinion in *Williams v. State of North Carolina*, supra.

In the *Williams* case this Court analyzed the Alaska Packers decision and with emphasis denied the erroneous conclusion of the Court of Appeal that the rule there followed applies to judgments as well as statutes. This Court said:

> "This Court, to be sure, has recognized that in case of *statutes*, 'the extra-state effect of which Congress has not prescribed', some 'accommodation of the conflicting interests of the two states' is necessary. Alaska Packers Ass'n v. Industrial Accident Comm., 294 U. S. 532, 547, 55 S. Ct. 518, 523, 79 L. Ed. 1044." (S. Ct. R., page 211).

And then:

> "But that principle would come into play only in case the Nevada decrees were assailed on the ground that Nevada must give full faith and credit in its divorce proceedings to the divorce statutes of North Carolina."

The analogy of the last quoted statement is obvious. The *Alaska Packers* case would have been apposite here if, in the trial of the case in Texas, an attempt had been made to enforce the statutes of Louisiana as against those of that State. Or if, say, in the Louisiana Court the plea had been that the laws of Texas should control and that they prevented further recovery here.

But a statute is not in issue. The legal question arises under the Federal Constitution and the full faith and credit clause thereof and the applicability of that clause to a *judgment* rendered in Texas between the same parties and involving the same controversy.

And, additional language of this Court in the *Williams* case entirely answers the argument of the Court of Appeal that the same rule that applies to statutes also deals with judgments of a sister State:

> "So far as judgments are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between, apart from Haddock v. Haddock. For this Court has been reluctant to admit exceptions in case of judgments rendered by the courts of a sister state, since the 'very purpose', of Art. IV, #1, was 'to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.' Milwaukee County v. M. E. White Co., supra, 296 U. S. at pages 276, 277, 56 S. Ct. at page 234, 80 L. Ed. 220." (S. Ct. R., page 211).

The *Williams* decision, in fact, is a complete brief in this case and to argue the question presented at great length would in effect be little less than a plagiarism of this Court's own discussion. But it is proper, at least for convenience, to quote further pertinent and applicable parts of that decision.

In the first place the ideas of the Court of Appeal, if any it had with reference to the *policy* of the State, were answered in one clear sentence:

> "Thus even though the cause of action could not be entertained in the state of the forum either because it had been barred by the local statute of limitations or *contravened local policy*, the judgment thereon obtained in a sister state is entitled to full faith and credit." (S. Ct. R., p. 211—Italics ours).

And by these interesting comments:

> "In the second place, the question as to what is a permissible limitation on the full faith and credit clause does not involve a decision on our part as to which state policy on divorce is the more desirable one. It does not involve selection of a rule which will encourage on the one hand or discourage on the other the practice of divorce. That choice in the realm of morals and religion rests with the legislatures of the states. Our own views as to the marriage institution and the avenues of escape which some states have created are immaterial. It is a Constitution which we are expounding—a Constitution which in no small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit clause."

* * * * * * * *

* * * * * * * *

"So when a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause merely because its enforcement or recognition in another state would conflict with the policy of the latter. Whether Congress has the power to create exceptions (see Yarborough v. Yarborough, 290 U. S. 202, 215, 54 S. Ct. 181, 186, 78 L. Ed. 269, 90 A. L. R. 924, note 2, dissenting opinion) is a question on which we express no view. It is sufficient here to note that Congress in its sweeping requirement that judgments of the courts of one state be given full faith and credit in the courts of another has not done so." (S. Ct. R., p. 215).

Or, an entire argument in support of this petition can be found in other language of Sections 2 and 3 of the *Williams* decision:

"Article IV, #1 of the Constitution not only directs that 'Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State' but also provides that 'Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.' Congress has exercised that power. By the Act of May 26, 1790, c. 11, 28 U. S. C. #687, 28 U. S. C. A. #687, Congress has provided that judgments '*shall have such faith and credit given to them in every court within the United States as they have by law or usage in the Courts of the State from which they are taken.*' Chief Justice Marshall stated in Hampton v. M'Conel, 3 Wheat. 234, 235, 4 L. Ed. 378, that '*the judgment of a state court*

should have the same credit, validity, and effect, in every other court in the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States.' That view has survived substantially intact. Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039. This Court only recently stated that Art. IV, #1 and the Act of May 26, 1790 require that *'not some but full'* faith and credit be given judgments of a state court. Davis v. Davis, 305 U. S. 32, 40, 59 S. Ct. 3, 6, 83 L. Ed. 26, 118 A. L. R. 1518." (S. Ct. R., p. 210—Italics ours).

The controlling expression in the last quoted language, which was from the pen of Chief Justice Marshall, is that *whatever plea would be good in Texas*, and none others, can be pleaded in any other court in the United States.

The plea of *res judicata* would have been good in Texas.

"As already shown, when the matter of compensation for Frank Pruitt's death was presented to the board originally, the board absolutely refused compensation. No notice of dissatisfaction was given by Wm. Pruitt, et al., and no suit was filed appealing therefrom. It follows that such order became final, and the board had no power or jurisdiction to pass on the matter a second time."

* * * * * * * *

* * * * * * * *

"It is further the rule that the final award of the board unappealed is entitled to the same faith and credit as a judgment of a court. There is

> therefore no escape from the conclusion that the award of November 14, 1928, made by the Accident Board denying these claimants compensation from this insurer on account of the death of Frank Pruitt *was and is res judicata of this entire suit.*" Ocean Accident & Guarantee Corporation v. Pruitt, 58 S. W. (2d) 41, decided by Commission of Appeals of Texas; Writ of Error denied by Texas Supreme Court. (Italics ours).

This rule was conceded by the Court of Appeal. As the plea was good in Texas it is good here. So said this Court in *Williams v. North Carolina*, supra.

The majority opinion in the *Williams* case is even more apt where there is involved, as here, only a money judgment rather than the institution of marriage there considered. True, the employee under the various Workmen's Compensation statutes is considered in the light of a ward of the State. But it was more difficult to apply the full faith and credit clause in a case dealing with domestic relations which concern not only the peaceful pursuits of the parties but the standing in society of their progeny. This is exemplified by the dissenting opinions of Mr. Justice Murphy and Mr. Justice Jackson which certainly would not have been rendered had they considered only a money judgment between parties in one State offered as a defense to a subsequent suit on the same cause of action in another.

They did not deny the application of the honored rule in cases of this sort; in fact the dissent of Mr. Justice Jackson, in referring to the prevailing opinion and the

decisions on which it rested, specifically confirmed the idea, as to money demands, that:

> "If a judgment is conclusive in the State where it was pronounced, it is equally conclusive everywhere." *Christmas v. Russell, 5 Wall. 290, 18 L. Ed. 473* (S. Ct. R., p. 220).

That rule was affirmed by the whole Court in the *Williams* case; and the rule must be applied here because it was shown and was uncontradicted, as well as conceded by the Court of Appeal, that a judgment of the Industrial Accident Board of Texas is conclusive in that State. Under the full faith and credit clause it is "equally conclusive" in the courts of Louisiana.

That is the solution of the whole problem; that is the simple answer to the question presented.

And for these reasons Petitioner most respectfully urges that its petition be granted.

Respectfully submitted,

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